

1 ZEV SHECHTMAN (BAR NO. 266280)
Zev.Shechtman@saul.com
2 CAROL CHOW (BAR NO. 169299)
carol.chow@saul.com
3 TURNER N. FALK (Admitted pro hac vice)
turner.falk@saul.com
4 SAUL EWING LLP
1888 Century Park East, Suite 1500
5 Los Angeles, California 90067
Telephone: (310) 255-6100
6 Facsimile: (310) 255-6200
7 Attorneys for Alan Gomperts
Debtor and Debtor in Possession
8

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**
11

12 In re:
13 SEATON INVESTMENTS, LLC, *et al.*,
14
15 Debtors and Debtors In
Possession.

- 16 ☐ Affects All Debtors.
17 ☐ Affects Seaton Investments, LLC
18 ☐ Affects Colyton Investments, LLC
19 ☐ Affects Broadway Avenue Investments, LLC
20 ☐ Affects SLA Investments, LLC
21 ☐ Affects Negev Investments, LLC
22 ☒ Affects Alan Gomperts
23 ☐ Affects Daniel Halevy
24 ☐ Affects Susan Halevy
25
26
27
28

Lead Case No. 2:24-bk-12079-VZ

Jointly Administered with Case Nos.:
2:24-bk-12080-VZ; 2:24-bk-12081-VZ;
2:24-bk-12082-VZ; 2:24-bk-12091-VZ;
2:24-bk-12074-VZ; 2:24-bk-12075-VZ and
2:24-bk-12076-VZ

Chapter 11

**MOTION FOR ENTRY OF ORDER
AUTHORIZING DEBTOR TO
MAINTAIN PREPETITION BANK
ACCOUNTS; AND MEMORANDUM
OF POINTS OF AUTHORITIES IN
SUPPORT THEREOF; AND
DECLARATION OF ALAN
GOMPERTS IN SUPPORT
THEREOF**

Hearing:

Date: June 11, 2024
Time: 11:00 a.m. PST
Courtroom: 1368
255 East Temple St.
Los Angeles, CA 90012

SAUL EWING LLP
5 PARK PLAZA, SUITE 650
IRVINE, CALIFORNIA 92614
(949) 252-2777

1 **TO THE HONORABLE, VINCENT P. ZURZOLO, UNITED STATES**
2 **BANKRUPTCY JUDGE AND INTERESTED PARTIES:**

3 Alan Gomperts as debtor and debtor in possession (the “Debtor”), hereby moves for an order
4 authorizing the Debtor to maintain two prepetition bank accounts for purposes of earning above-
5 market interest on invested money market funds in those accounts.
6

7 This Motion is based upon this Motion and Notice thereof, the below Memorandum of Points
8 and Authorities, the Declaration of Alan Gomperts attached hereto, the papers and pleadings on file
9 in this case, and such other evidence as may be presented to the Court.
10

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **INTRODUCTION**

14 By this motion, the Debtor seeks authority to maintain his prepetition accounts at California
15 Credit Union ending in ending in 7993 (the “CCU Account”) and at Farmers & Merchants Bank
16 ending in 0830 (the “Farmers Account,” collectively with the CCU Account the “High-Yield
17 Accounts”) for the limited purpose of earning the high deposit interest offered by the High-Yield
18 Accounts. These interest earnings are beneficial to the estate, and the Debtor will not make any
19 payments or transfers out of the High-Yield Accounts except to transfer necessary funds to his
20 already-opened debtor-in-possession account (the “DIP Account”).
21
22

23 The High-Yield Accounts are deposited with reputable, insured financial institutions. The
24 Debtor generally has sufficient income to pay his ongoing everyday expenses, so the amounts in
25 these accounts are not urgently necessary for the maintenance of the Debtor or performance of a
26 plan of reorganization. Allowing these funds to remain in the High-Yield Accounts maximizes the
27 investment returns to the estate via a low-risk investment. Expenses will only be paid from the DIP
28

1 Account, allowing parties in interest the usual level of oversight for the Debtor's postpetition
2 spending.

3 The Debtor respectfully requests that the Court authorize this relief to avoid potential
4 significant harm to the Debtor's investment earnings, safely generating profits, which is in the best
5 interest of the estate and creditors.
6

7 **II.**

8 **BACKGROUND FACTS**

9 **A. BANKRUPTCY BACKGROUND**

10 On March 18, 2023 (the "Petition Date"), the Debtor and the above-captioned related parties,
11 as debtors and debtors in possession (collectively the "Debtors"), filed voluntary petitions for relief
12 under chapter 11 of the United States Code (the "Bankruptcy Code"). The Debtors' cases are jointly
13 administered. The Debtors continue to operate their businesses as debtors in possession pursuant to
14 section 1107 of the Bankruptcy Code. Detailed factual information regarding the Debtors is included
15 in the Motion for Joint Administration filed on March 20, 2024. In summary, the entity Debtors are
16 real estate investment and development entities, and the individual Debtors including the Debtor
17 were guarantors of certain debts owed by the entities.
18

19 **B. THE DEBTOR'S PLAN FOR THIS CASE**

20 Issues surrounding the repayment of the guaranteed debts necessitated the filing of these
21 bankruptcy cases. The Debtors intend to propose a joint plan for full payment of all debts over time,
22 with interest. The Debtors have sufficient income to pay on a restructured full-payment plan.
23

24 **III.**

25 **FACTS SPECIFIC TO THE RELIEF REQUESTED**

26 **A. PREPETITION BANK ACCOUNTS**

1 The Debtor maintains an account at California Credit Union, the CCU Account, earning
2 4.6% annual interest. The account balance on the petition date was \$449,941.29. The CCU Account
3 is federally insured by the National Credit Union Administration, a U.S. government agency.

4 The Debtor maintains an account at Farmers & Merchants Bank, the Farmers Account,
5 earning 3.0% annual interest. The account balance on the petition date was \$328,047.62. The
6 Farmers Account is federally insured by FDIC, a U.S. government agency. Farmers & Merchants
7 Bank is an Approved Depository by the Office of the United States Trustee, Region 16.

8 Prepetition, the Debtor did not regularly pay expenses out of the High-Yield Accounts.
9 Instead, the Debtor transferred money from the High-Yield Accounts to another bank account and
10 paid expenses from that account. Most of the Debtor's expenses were paid out of incoming cash
11 flow, and funds in the High-Yield Accounts were mainly left there to accrue interest.

12 Because switching to new accounts reduces the Debtor's investment earnings to the
13 detriment of the estate, because the funds in the High Yield-Accounts are insured and protected and
14 because those funds are not necessary for the payment of the Debtor's ongoing expenses during the
15 pendency of this case, the Debtor believes he should be authorized to keep the High-Yield Accounts
16 open postpetition.

17
18
19 **IV.**

20 **LEGAL DISCUSSION**

21
22 **A. REQUESTED RELIEF**

23 The Debtor seeks authority to maintain the High-Yield Accounts to earn interest thereon. If
24 necessary to pay ongoing expenses, funds in the High-Yield Accounts will first be transferred to the
25 Debtor's DIP Account before being used.

26 **B. BASIS FOR RELIEF REQUESTED**

27 "The court may issue any order, process, or judgment that is necessary or appropriate to
28

1 carry out the provisions of’ the Bankruptcy Code. 11 U.S.C. § 105(a). Section 105(a) provides a
2 statutory counterpart to the court’s otherwise inherent and discretionary equitable powers. See In re
3 Sasson, 424 F.3d 864, 874 (9th Cir. 2005); In re Halvorson, 581 B.R. 610, 636 n.91 (Bankr. C.D.
4 Cal. 2018).

5 The U.S. Trustee has promulgated guidelines pursuant to 28 U.S.C. § 586. These guidelines
6 require that chapter 11 debtors close all existing bank accounts when they file their petitions and
7 open new DIP accounts at approved financial institutions. However, courts routinely authorize
8 variance from the requirements in appropriate circumstances. Because maintenance of existing bank
9 accounts is a routine matter, there are few published or reported decisions addressing it. See, e.g.,
10 In re Victor Valley Community Hosp., Case No. 6:10-bk-39537-CB, Docket No. 32 (Bankr. C.D.
11 Cal. Sep. 17, 2010).

12 Courts may waive compliance with section 345(b) of the Bankruptcy Code for “cause.” In
13 evaluating whether “cause” exists, courts have considered a number of factors, including, among
14 others, the sophistication and size of a debtor’s business, the amounts of the investments involved,
15 bank ratings, the complexity of the case, the debtor’s safeguards for the funds, the debtor’s ability
16 to reorganize in the face of failure of one or more of the financial institutions, the benefit to the
17 debtor of a waiver of the section 345(b) requirements, the potential harm to the estate and the
18 reasonableness of such a waiver under the circumstances. See In re Serv. Merch. Co., 240 B.R. 894,
19 896 (Bankr. M.D. Tenn. 1999).

20 Pursuant to 11 U.S.C. § 345(a), a trustee (and by extension a debtor-in-possession who must
21 perform the duties of a trustee pursuant to 11 U.S.C. § 1107(a)) “may make such deposit or
22 investment of the money of the estate for which such trustee serves as will yield the maximum
23 reasonable net return on such money, taking into account the safety of such deposit or investment.”

24 A debtor-in-possession may have a duty to maximize the return on investment of a
25
26
27
28

1 bankruptcy estate's funds, taking into consideration "(1) the sum of funds subject to investment, (2)
2 the duration of the trustee's administration of the estate, (3) the time required by the trustee to
3 manage the transfer of funds, and (4) the frequency with which the trustee needs to access those
4 funds." Kalyana v. Swaine (In re Accomazzo), 226 B.R. 426, 429 (D. Ariz. 1998).

5
6 The Debtor has opened a DIP Account at an authorized depository (Wells Fargo), and is
7 paying all expenses out of the DIP Account during the pendency of this case. In doing so, the Debtor
8 is complying with the requirements of section 345(b).

9 Application of the factors laid out in Accomazzo demonstrates that the Debtor has
10 established cause to waive the requirements of section 345(b) as to the High-Yield Accounts to
11 permit the Debtor to earn interest investment returns. The sum of funds subject to investment is
12 meaningful, and placing them in a low-interest account forfeits potential low-risk investment
13 returns. The Debtor intends to proceed quickly through this bankruptcy case by confirming a full-
14 payment plan, shortening the time during which parties in interest must monitor the Debtor's
15 financial dealings.
16

17 If forced to close the High-Yield Accounts, the Debtor would likely need to establish several
18 new debtor-in-possession accounts to hold these funds, wasting valuable time and effort while
19 providing lower investment returns. The High-Yield Accounts are invested in money market funds,
20 one of the lowest-risk products available anywhere; they are not used in risky investments.¹
21

22 Lastly, the Debtor does not need frequent access to the funds in the High-Yield Accounts.
23 The Debtor is able to meet ordinary expenses out of his cash flow, and only draws upon the High-
24 Yield Accounts when an extraordinary expenses presents itself – like annual tuition payments for
25 his child.
26

27 ¹ "[M]oney market funds are still considered one of the safest investments available to retail investors, and the
28 numerous SEC rules and reforms passed have made them safer." Taking a Look at Money Market Funds, FINRA.org
(April 9, 2024), <https://www.finra.org/investors/insights/money-market-funds>.

1 Based on these factors, the Debtor seeks to be excepted from section 345(b) for the sole
2 purpose of continuing to receive interest income on the High-Yield Accounts while paying all
3 expenses from the DIP Account. In this regard, the Debtor will be generally complying with section
4 345(b), and seeks authority for the sole exception described. For these reasons, it is appropriate for
5 the Court to grant the Debtor a limited exception from compliance with section 345(b) for the limited
6 purpose described.
7

8
9 V.

10 **CONCLUSION AND REQUESTED RELIEF**

11 For the foregoing reasons, the Debtor requests that the Court enter an order substantially in
12 the form of the order attached as Exhibit "A" hereto, granting this motion, authorizing the Debtor
13 to maintain the High-Yield Accounts. The Debtor also requests such further relief as the Court
14 deems just and proper.
15

16
17
18 DATED: May 7, 2024

SAUL EWING LLP

19
20 By: /s/ Turner N. Falk

ZEV SHECHTMAN

CAROL CHOW

TURNER N. FALK

Attorneys for Alan Gomperts

Debtor and Debtor in Possession
21
22
23
24
25
26
27
28